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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,610	09/29/2003	Carla Rosa Pienknagura	ACS 64021	6355

24201 7590 05/03/2006

FULWIDER PATTON
6060 CENTER DRIVE
10TH FLOOR
LOS ANGELES, CA 90045

EXAMINER

WEBB, SARAH K

ART UNIT	PAPER NUMBER
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3731

DATE MAILED: 05/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary

Application No.

10/675,610

Applicant(s)

PIENKNAGURA, CARLA ROSA

Examiner

Sarah K. Webb

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>7/15/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. Claims 1-3,5-11,17-25, are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 6,679,911 to Burgermeister.

See Figures 7A and 7B. The stent has a plurality of flexible rings (310), and the proximal and distal rings have apertures defined by second peaks (332) attached to first peaks (334). Burgermeister explicitly states that the apertures enlarge when the stent expands (column 7, lines 48-52). The stent is metallic (column 2, line 9). Any part of the stent may have a variable thickness (column 4, lines 16-21 and column 9, line 15 through column 10). The stent may include a drug (column 4, lines 20-22

Regarding claims 9 and 10: the limitations “formed from a tube” and “formed from a sheet” are considered to be product by process limitations. Whether a product is patentable depends on whether it is known in the art or it is obvious, and is not governed by whether the process by which it is made is patentable. Therefore, these claims are not given patentable weight.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 4,12-16, and 26-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgermeister in view of US Patent No. 5,695,516 to Fischell et al.

Burgermeister fails to state that the stent of Figures 7A and 7B has a greater expanded length than unexpanded length, but does state that it does not forshorten during expansion (column 3, lines 22-34). Fischell teaches that stent can be configured to lengthen upon expansion to ensure complete coverage of a stenosis (column 1).

Burgermeister does teach that a stent structure can be modified so that the stent lengthens upon expansion (column 3, lines 50-54). As discussed above, the apertures defined by second peaks (332) attached to first peaks (334) enlarge when the stent expands (column 7, lines 48-52). Combining the lengthening apertures with a stent structure that does not shorten upon expansion would result in a lengthening stent. The embodiment in Figure 3A maintains a substantially constant length in expanded and compressed configurations (column 6, lines 13-24). This stent has a similar basic structure to the stent disclosed in the instant application, having undulating rings with links connecting distal peaks of adjacent rings. Even though the peaks are slightly out of phase in Figure 3A, Burgermeister explains that the peaks align upon expansion (column 3, lines 55-60). It would have been obvious to one of

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ordinary skill in the art at the time the invention was made to combine the lengthening apertures and non-forshortening stent structure or Burgermeister in order to obtain a stent that lengthens upon expansion, as Fischell teaches that this helps to ensure that a stenosis is completely covered.

Regarding claims 12-16: Burgermeister fails to disclose specific metal alloys for forming the stent, such as nickel-titanium, but this is a common material used for forming stents and is well known in the art.

Regarding claims 28-31, Burgermeister states that the stent can be delivered by balloon catheter (column 5, line 10) but does not specify the location of the ends of the stent to the balloon shoulder. It is considered to be an obvious matter of design choice to change the balloon length to accommodate for a different stent length, since such a modification would have involved a mere change in size of a component. A change in size is generally recognized as being within the level or ordinary skill in the art.

Conclusion

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US Patent No. 5,755,776 to Al-Saadon discloses a lengthening stent.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah K. Webb whose telephone number is (571) 272-4706. The examiner can normally be reached on Mon-Fri 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on (571) 272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SKW
4/26/06


JULIAN W. WOO
PRIMARY EXAMINER